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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF ELECTRIC INDUSTRY RESTRUCTURING

DOCKET NO. U-0000-94-165

COMMENTS ON ELECTRIC INDUSTRY RESTRUCTURING BY NORDIC POWER

Nordic Power of Southpoint I, Limited Partnership ("Nordic Power") presents its general comments on the objectives for competition in the electric industry, followed by Nordic Power's response to the questions raised in this docket.

General Comments on the Objectives of Restructuring the Electrical Industry Towards Competition

Restructuring of the electrical industry in Arizona should be guided by several basic principles, starting with the goal of advancing efficient quality services to all customers through open competition. Other important principles include:

- The competitive rights of all participants must be clearly defined.
- Monopolistic barriers should be removed.
- Open competition should occur as rapidly as reasonably possible.
- Restructuring should occur on a comprehensive basis, to the extent reasonably feasible, so that as many customers as possible may benefit as soon as possible.
- A "Buy/Sell" program should begin immediately with the more price-sensitive customers of electricity and any others who wish to participate.
- Small customers should be able to aggregate their loads so they will be able to purchase low-cost energy.
- Utilities should unbundle their costs and publish reasonable generation, transmission, distribution and other service rates to facilitate the open access program.
- The issue of potential stranded investments should be transferred to a separate docket, for evaluation as this restructuring occurs.

Open competition in Arizona will lead to increased efficiency, reduce rates, increased innovation, a decrease in the need for reserve capacity, better service, and new and expanded businesses in Arizona. As the degree of competition increases, the need for regulation decreases. End-users should be free to pick the level of service they desire based upon voluntary rates.

Nordic Power proposes a "Buy/Sell" direct access program while the Commission implements its competitive program for restructuring the entire electrical industry in Arizona. This "Buy/Sell" or bundled service program allows third-party providers to supply desirable sources of power and arrange for the utility to deliver that power to the customer. This nonjurisdictional power source would be purchased by the utility and resold to the direct access participant at cost, plus charges for redelivery service. In the deregulated gas markets, all participants pay a negotiated price for gas delivery services offered by the regulated utility. Similarly, participants in the "Buy/Sell" program should be entitled to negotiate reasonable rates for redelivery services of electricity. The legal simplicity of the "Buy/Sell" approach is self-evident, requiring no franchise, certificate of convenience and necessity, or sales contract approval by the Commission.

This "Buy/Sell" form of comparable direct access service for electric customers would closely parallel the administrative and legal structure currently used for natural gas transportation. Under this framework, the utility is required to deliver the power to the customer and the utility will be reimbursed for services rendered. It allows the customer to negotiate price, name the supplier of choice, and nominate the amount of power desired.

The "Buy/Sell" framework for electricity has historically been used by non-public entities which provide electrical service to end-users. Some non-public corporations purchase power from third-party providers, under wholesale contracts, and use the transmission and distribution systems of the utility in scheduling and delivering power to end-users. Some large industries

in Arizona have electrical loads which are larger than the entire load of some non-public corporations which are providing electricity to end-users in Arizona.

Use of this "Buy/Sell" arrangement enhances the competitiveness of direct access, with the regulated utility continuing to receive revenues for transmission and distribution services, and without any legal concession by the regulated utility. The utility purchases power at its system boundaries from the third-party providers and resells the power to the customer. Consequently, the third-party provider is not doing business of a utility and thus no franchise, certificate, or approval of individual sales contracts is needed. By using the "Buy/Sell" framework, federal legal issues are also avoided entirely because the third-party provider sells to the utility, the transaction is viewed as a wholesale matter, and any entity qualified to sell on a wholesale basis may do so without creating a new federal or state legal precedent. In the natural gas industry, procedures for direct sales to end-users are widely used throughout the country and legally recognized. While the rates of utilities are being unbundled, this "Buy/Sell" arrangement would allow for end-users to make competitive choices.

Nordic Power recommends the Commission immediately create an unbundled direct access program which would be available to nonutility providers and utility affiliates on comparable terms. Unbundled service options structured along the lines of wholesale power agreements would be provided as a means for all service providers (nonutility and separate affiliates of utilities) to deliver services to all customers. Undue exercise of market power by utility affiliates would be prevented by requiring that all direct access transactions be charged the same tariff rates for the same transmission and distribution services.

Specific Comments on Electric Industry Restructuring

The Arizona Corporation Commission has raised the following questions, presented here in bold, and Nordic Power has presented its position for each.

A1. Affected Utilities.

Which utilities should open their markets to competition?

All electrical utilities in Arizona should open their markets to competition. However, for purposes of this proceeding, only utilities under the jurisdiction of the Arizona Corporation Commission need be addressed.

A monopolist is literally, a sole seller. In the electrical industry, monopoly power controls the supply of electricity to end-users. Traditionally, the electrical industry was viewed by economists as a natural monopoly, implying one utility should emerge from "the natural economic state" because of the economies of scale. As a consequence, the surviving utility was regulated under the notions of efficiency and fairness. Vernon L. Smith, *Regulatory Reform in the Electric Power Industry* (Goldwater Institute, Issue Analysis Report #3: March 1995).

Open markets have allowed for "economies of scale" to move to their natural levels and beyond the confines of monopolistic service territories. Builders of past generation joined together in multilateral arrangements to reach economies of scale, rather than each utility building its own plant. Transmission, like generation, offers substantial economies of scale in the competitive environment. Joint efforts in building high-voltage transmission has opened the market to the sale of large blocks of power. By opening the competitive environment down to the end-user for all regulated utilities, all retail customers will be able to benefit from these voluntary economies of scale which have already occurred in the generation and transmission framework of the electrical industry. As a consequence, Nordic Power is pursuing the "Buy/Sell" arrangement with end-users.

A2. Scope of Restructuring

a. How much of the utilities' markets should be opened to competition?

b. Which consumers should be allowed to shop around for power and energy?

c. Should utility customers served under existing contracts be eligible to participate in the competitive market prior to expiration of the existing contracts?

d. If divestiture were undertaken, how should it be accomplished?

All markets of utilities should be open to competition. The electrical utility industry is technologically capable of effective competition, without the early fears of duplication. As Professor Vernon Smith points out, this duplication is the norm for other customer services and New Zealand has successfully eliminated the monopoly franchising of local distribution:

> Local distribution systems are often thought to present the strongest argument for natural monopoly: to avoid inefficient duplication. It is significant that in the 1915 report of the Arizona Corporation Commission, quoted above, it was the distribution of electricity that was singled out as "essentially and rightly monopolistic."
>
> One flaw with this view is that in other industries such "duplication" is the norm and widely applauded as providing diversity of service. For example, innumerable neighborhoods are served by multiple supermarkets and service stations, sometimes located next to each other, and shopping malls normally have competing stores selling the same product. Contrary to this view, New Zealand has eliminated the monopoly franchising of local distribution.

Smith, *supra* at 3.

Arizona's electrical industry has become increasingly competitive at the wholesale level because of changes created by federal law and regulations by the Federal Energy Regulatory Commission (FERC). Efforts have been made by end-users to create competition, through the use of substitutes, such as switching to natural gas, investing in self-generation or solar power, and engaging in their own demand-side management programs. The full benefits of competition will not occur until customers have a choice of electrical service at the retail level. Through direct access, end-users would not be "captive customers" of the local utility. They will be able to select their electric service just as customers may do for natural gas, long-distance telephone, airline and other consumer services.

Large electricity-intensive industries and all power consumers should have the ability to lower their electric costs. Electrical bills constitute a major cost of production in Arizona, and a significant percent of the household budget. For example, in Arizona the industrial rates are significantly above the national average of 4.9¢ per kWh. (IOU rates, based on 1994 figures from the U.S. Energy Information Administration.) By purchasing lower-cost power, Arizona's

industries will be more competitive, are likely to increase sales, and will create more jobs, thus improving Arizona's local and state economies.

Responding to the Mideast energy crisis, Congress created the independent power industry in 1978 through enactment of the Public Utility Regulatory Policies Act (PURPA). It created a new class of non-utility power generators known as qualified facilities (QFs)--cogenerators and small power producers. Since 1978, they have led the way towards competition in generation markets, along with a second group, known as independent power producers (IPPs), which entered the market to meet utility needs for new capacity where a cogeneration or small power plant was not a sensible option.

Passage of the Energy Policy Act in 1992 set the stage for increased competition in wholesale and retail markets and gave states a broadened role in formulating competitive utility policy. Customers seeking cost savings have been the driving force behind retail wheeling. Utilities with above-average rates are understandably upset at the prospect of losing their customers. This has resulted in a series of forums and discussions about how and when to open the market to all electrical customers. However, Arizona's cities and towns already have the right to own and operate electrical facilities. Municipalities and unincorporated areas should be able to aggregate their power usage for greater bargaining power, without actually having to own and operate the electrical facilities.

Utility customers served under existing contracts should be eligible to participate in the competitive market prior to the expiration of the existing contracts. Economic conditions of both the utility and the customers have changed because of federal legislation, regulations and competitive opportunities on the state and local levels. It would seem patently unfair to allow the utility to seek relief during the transition to a competitive market and still bind the customers to their existing contract. To do so would allow the utility to adjust to a competitive environment while constraining the customers to regulated contract rates.

As to the issue of divestiture, each utility should consider all phases of divestiture if the economics prove to make it competitive in the marketplace. Without regulation, each utility can determine what assets are needed and productive, and rid itself of unwanted and unproductive assets. Nordic Power supports "operational unbundling," rather than the more intrusive "corporation unbundling." The Commission, however, should receive assurances from each public service utility that all transactions shall be at arms-length and there shall be no cross subsidization among affiliates or the unbundled services.

A3. Term of Restructuring

a. When should competition start?

b. If competition is in the form of a pilot or phase-in, how long should the pilot or phases run?

c. If competition is in the form of a pilot, how can the term of the pilot be set so as to avoid discouraging long term contracts signed under the pilot?

Utilities have been given time to reposition themselves to respond to market forces. With passage of the 1992 National Energy Policy Act, the competitive workings of the wholesale market have been expanded. Wholesale wheeling was made legal. The Federal Energy Regulatory Commission was given the power to order transmission access, which it recently has done so. Third, the Exempt Wholesale Generator designation was created, providing non-utility producers greater access to the market.

Competition in the retail electrical industry should begin immediately with the "Buy/Sell" framework. Full open access should be completed as soon as possible and no later than January 1, 1998. Market forces do not require a pilot program which would merely lead to more regulation, possible litigation, and further delay in reducing consumers' rates.

Deregulation of natural gas saved $35 billion a year, and the competitive restructuring of the electric industry could save consumers between $60 to $80 billion per year nationwide. Households could cut 30 to 40 percent off their electrical bills if electricity is deregulated, according to recent hearing testimony before the House Subcommittee on Energy and Power.

These benefits of deregulation have been compared to one of the largest tax cuts in history. Testimony of Kenneth L. Lay, Chairman and CEO, Enron Corporation on "Electricity Regulation: A Vision for the Future" before the U.S. House of Representatives Committee on Commerce, Subcommittee on Energy and Power (May 15, 1996).

A recent study by the CSE Foundation determined competition in the electric industry would result in benefits valued at $110 billion each year. U.S. residential customers would eventually save $360 a year, with commercial customers saving $2,176 annually and larger industrial customers averaging a savings of $36,000 per year. This study by Clemson University economists concludes there is tremendous potential for job creation, wage increases, and reduced prices for everyday goods and services, if electric competition occurred. Michael T. Maloney & Robert E. McCormick, *Customer Choice, Consumer Value: An Analysis of Retail Competition In America's Electric Industry* (Friends of Citizens for a Sound Economy Foundation: May 1996). Each month of delay means less savings to all Arizona customers.

Another reason for the early implementation of this competitive program is the economic advantage Arizona will have relative to other states. Local markets are changing to long-distant competition, through open access of transmission systems. Deregulation in other states will mean lower-cost electricity, which would be available for use in Arizona, will be marketed to fulfill those demands, thus raising the relative price of the remaining supply. Arizona consumers will benefit if they have the opportunity to purchase power at the most competitive rates at the earliest possible time.

The initial "Buy/Sell" program recommended by Nordic Power should continue until a complete open access program is in place. During this transition period, any remaining restraints on competition could be resolved, with an open docket on the issue of stranded investments for continued evaluation by the Commission.

In response to the question regarding how the pilot program may avoid discouraging long-term contracts, Nordic Power's proposal addresses this concern by suggesting a deliberate and thoughtful path towards complete open access without the use of a pilot program.

A4. Services Available on a Competitive Basis.

Which services should be available in a competitive market?

- **Distributed energy services at market based rates (serving multiple consumers located in proximity, and not requiring transmission service from others); this is distinct from on-site self generation for just one customer.**
- **Central station generation services at market based rates (generation serving one or more consumers located at a distance from consumers and requiring transmission service).**
- **Other services described in Sections A5, A6, A7, and A8.**
- **Other services (please describe).**

All services should be available on a competitive basis. Utilities have already joined the competitive market for many of its services, by purchasing wholesale power and transmission, and by outsourcing many of their utility functions. Similarly, all services of the utilities should be priced in the marketplace. Open access is a stimulus for better customer service in addition to competitive rates.

A5. Necessary Services

Utilities and perhaps other parties will have to address the services listed below. Please indicate how these services should be offered, measured (metered), and priced on an unbundled basis.

- **distribution service**
- **transmission service**
- **supplemental generation service**
- **imbalance service[1] (including accounting for losses)**
- **back-up (standby) service**
- **voltage control**
- **other ancillary services necessary for maintaining system reliability**
- **scheduling of supplies and demands**
- **repairs/consumer complaints**

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[1] Imbalance service applies in cases where the consumer takes more or less power or energy than scheduled.

- **other necessary services -- please describe**

Customers should not be required to use any service offered, unless it is competitively priced and needed by the customer. Scheduling of electrical energy can be performed by a number of existing organizations, and need not be limited to a local utility. IPPs and power marketers have the ability to obtain services required for delivery of energy to end-users, regardless of their size.

The unbundling of utility costs is necessary for competitive rates to occur. The Commission should order all regulated utilities to (a) submit their customer lists, with the most recent 12-month power usage, and (b) unbundle their rates and submit proposed tariffs by December 31, 1996. Each utility should unbundle its existing rates and embedded costs into the following functional activities: (1) generation, (2) transmission, (3) distribution, (4) customer services, and (5) demand side management (DSM), low income, environmental and renewable programs. The utilities have been engaged in this analysis for sometime, particularly in response to rulemaking by FERC. Consequently, this process should be able to occur swiftly at minimal cost.

The customer may choose from whom he or she may purchase generation services, including supplemental and back-up (standby) service. The distributive service, including line use and repair, and metering, should be based on negotiated and approved rates. Billing services, after they are unbundled by the utility, may be competitively marketed and performed by third-party providers. Other services may be made available to the customer on a voluntary basis. The customer (or third-party provider) and the utility may negotiate any bilateral arrangement for other services, such as the scheduling of electricity, special services for reliability, and resolving any imbalances or losses in delivering the electricity.

A6. Market Center

The market may benefit from the services listed below. Please indicate how these services should be offered and priced.

- **title transfer**
- **transaction confirmation**
- **establishing credit standards**
- **invoicing**
- **dispatching of transmission/generation**
- **exchanges/swaps**
- **interruption notification**
- **imbalance trades**

IPP's, power marketers, and other utilities may obtain competitive prices necessary to service each customer, or develop these services as the demand arises. Depending on how the regulated utility may decide to be restructured, such as by segregating its transmission, generation and distribution systems into separate entities, will determine how these services might be offered and priced. These services of title transfer, transaction confirmation and credit standards need not be marketed and priced separately. They should be absorbed as part of the transaction costs incurred by the customer (or third-party provider) and the utility. Dispatching of transmission/generation, exchanges/swaps, interruption notification, and imbalance trades are operational costs, with the price to be negotiated by the customer (or third-party provider) and the utility.

A7. Spot Market Services

The market may benefit from the services listed below. Please indicate how these services should be offered and priced.

- **electronic bulletin boards for spot transactions/prices**
- **power pooling services**
- **coordination with futures/options markets**

Electricity may be viewed as a commodity, the same way as natural gas has become a commodity. Energy and its prices are now available on an hourly basis by dispatchers and others, at prices considerably lower than those of regulated utilities. Power pooling services are not necessary for the "Buy/Sell" proposal of Nordic Power. The recently developed electric futures contract is a way of introducing risk management tools into the electric industry and it is a natural outgrowth of the competitive environment. These futures/options markets are already being offered and priced in the marketplace.

A8. Transmission Service

For a competitive market to work, utilities owning transmission facilities must provide transmission service. Please indicate how the following objective would be met:

- **services must be provided consistent with FERC tariffs**
- **utilities must accept power delivered to their transmission systems by other suppliers and offer wheeling services comparable to services they provide to themselves**
- **all sellers supplying consumers must have interconnection agreements with owners of necessary transmission facilities**

The wholesale transmission "highway" is now open. FERC Order No. 888 opened wholesale power sales to competition. It requires public utilities owning, controlling, or operating transmission lines to file non-discriminatory open access tariffs that offer others the same transmission service they provide themselves. On April 24, 1996, Chair Elizabeth A. Moler of FERC declared, "Today's actions by the Commission will benefit the industry and consumers to the tune of billions of dollars every year. They will give us an electric industry ready to enter the 21st Century. These rules will accelerate competition and bring lower prices and more choices to energy customers." FERC Docket Nos. RM 95-8-000, RM 94-7-001, RM 95-9-000 and RM 96-11-000, Press Release (April 24, 1996).

In the open access final rule, FERC issued a single pro forma tariff describing the minimum terms and conditions of service to bring about this non-discriminatory open access transmission service. All utilities that own, control or operate interstate transmission facilities are required to offer service to others under the pro forma tariff. These public utilities must also use the pro forma tariffs for their own wholesale energy sales and purchases.

The Arizona Corporation Commission need not address the wholesale phase of these transactions. Wholesale transmission service between a buyer and seller must be consistent with FERC Order No. 888. The buyer and seller of course will be required to comply. In a second rule, Order No. 889, FERC will ensure that transmission owners and their affiliates do not have an unfair competitive advantage in using transmission to sell power. This rule, known as the Open Access Same-Time Information System (OASIS) rule, requires public utilities to obtain

information about their transmission system for their own wholesale power transactions, such as available capacity in the same way their competitors do--via an OASIS on the Internet. Furthermore, the utilities must completely separate their wholesale power marketing and transmission operation functions. As an additional safeguard, Section 206 of the Federal Power Act is available if a public utility seeks to circumvent Order 888. Under Section 206, any person is free to file a complaint with the Federal Energy Regulatory Commission detailing any alleged misbehavior on the part of the public utility or its affiliates concerning matters subject to FERC jurisdiction under the Federal Power Act.

A9. Recovery of Stranded Investment

Please indicate how the recovery (if any) of stranded investment should be accomplished. Address each of the following issues:

a. The definition of stranded investment.

b. The fraction of stranded investment which should be recovered.

c. How the Commission will determine the amount of stranded investment, taking into account: revenues under traditional tariffed rates (or existing special contracts); actual utility revenues from customers who obtain discounted rates or obtain service from other; increases in net revenues from wholesale sales and additional retail sales, including the effects of price elasticity of demand; increases in the value of assets due to new pricing or competition; mitigation of stranded investment; and other relevant factors.

d. Preliminary estimates of the magnitude of stranded investment (please provide supporting analyses).

e. The proper ratemaking treatment of negative stranded investment.

f. From whom stranded investment should be recovered.

g. The mechanism for recovery of stranded investment.

h. The time period over which stranded investment is to be recovered.

i. How utilities can mitigate stranded investment.

As Nordic Power stated at the outset, the identification and potential recovery of stranded investments are premature. The strandable investment issue is more appropriately addressed after open access has occurred and after potential strandable investments have been determined

to be noncompetitive because of regulatory constraints. Consequently, all the issues under this Item A9 should be set over to a separate docket for evaluation while the electrical industry is being restructured. Some of the reasons for this recommendation are presented in this response.

The mere possible existence of a stranded investment does not justify any delay in opening electrical markets. The so-called "stranded" cost recovery programs are anticompetitive on their face. "Bygones are bygones" is a basic principle of economics. In other words, decisions about the future should not be influenced by costs already expended. The fact that a stranded investment may have occurred is just one example as to how monopoly regulation has failed consumers, and why competition should begin sooner rather than later. Conditioning the restructuring of this industry on the recovery of stranded costs will only hinder or prevent competition from occurring and it will deny cost-savings to Arizona's consumers while these issues are being debated.

A "stranded investment" is an uneconomic asset and the antithesis of competition. In analyzing stranded investments, some separate them into three accounting categories: utility-owned generation, long-term obligations for firm purchases, and regulatory assets. Power production at different costs, such as nuclear may be higher than gas or coal-generated power, may result in stranded investment of utility-owned generation, according to some. Power contracts with Qualified Facilities, fuel contracts to supply uneconomic power plants, and power-purchase agreements undertaken to serve a larger load that does not materialize are examples of "the long-term obligations for firm purchases." Regulatory assets include the normalizing of taxes so as to spread the benefits of federal and state income taxes, such as accelerated depreciation over the useful life of the asset rather than taking the benefits in the years in which they occur. Some claim, to the extent these deferred liabilities are related to stranded physical assets, they may also be strandable. Other regulatory assets, according to proponents of stranded investment recovery, may include "public policy assets" mandated by the Commission, such as environmental compliance beyond that required by law, special low-income programs,

and research and development expenditures for which the utility will not receive equivalent or future benefits. National Conference of State Legislatures, *Legislative Report*, Vol. 20, No. 20, Utility Series 3 (December 1995).

Estimates of stranded investments nationally have varied widely, because no one knows the future cost and price of electricity and there is no uniform definition or method of calculating stranded investments. The amount of stranded investments, if any, can be determined only after Arizona's electrical industry is restructured. Many agree the existence and amount of stranded investment will vary among utilities, states and regions, depending on (a) the degree and pace of competition in Arizona and elsewhere, (b) the types of generation, such as coal versus nuclear, (c) the cost of power plants, (d) the fuel and power costs of utilities, and (e) state regulatory policies and laws. *NCSL Report, supra.*

If stranded investments should occur in the future, the questions are who should pay and how much? A recent survey of utility executives indicates only 44% expect 100% recovery of stranded costs. "Survey of Utility Executives Reveals Many Do Not Expect 100%," *Electric Utility Weekly* (January 15, 1996). "Why should utility investors be uniquely indemnified against change?" Holman W. Jenkins, Jr. answers this rhetorical question by observing that this "favor was not forthcoming to the owners of airlines, railroads and natural gas and trucking companies. And anybody who was paying attention saw that electricity was destined for the same buzzsaw." *The Wall Street Journal* (May 14, 1996) at A23. Investors may protect themselves, as Mr. Jenkins points out, by owning stock in low-cost utilities or other investments.

Nordic Power opposes the "lost revenue" approach in quantifying stranded investments--it is imprecise and it rewards inefficiencies and all decisions whether prudent or not. In evaluating whether a strandable investment has occurred, different analyses should be adopted for utility-owned generation, long-term obligations for firm purchases, and regulatory assets. The expectations of the utility and its legal obligations will differ among these types of decisions. For utility-owned generation, the utility has opportunities to sell bulk power or dispose of

interests in the facility. Consequently, these costs and values cannot be determined until after-the-fact, with any degree of certainty. Long-term obligations for firm purchases may have been prudent or speculative, depending on each transaction and the aggressiveness of the utility to hedge its position and to displace uneconomic contracts. Regulatory assets, particularly "public policy assets," should be evaluated in the context of whether these costs should have been incurred irrespective of Commission approval and, if so, they are not strandable.

In the separate docket on stranded investments, the Commission may evaluate other programs. For example, the 1995 Massachusetts legislation utilizes the "used and useful" concept to establish stranded investment compensation. Under this proposal, the state commission would be required to make a determination that the facilities, or contracts, no longer meet "used and useful" standards. To prove such a status, the utility would have to provide evidence of good faith efforts to market the power or transmission capacity. The Massachusetts Commission could instruct the utility to sell the stranded investment at market value and divide the remaining cost between company stockholders and ratepayers of the Consumer Service District, with ratepayers responsible for no more than one-third of the loss.

A10. Recovery of Costs of Commission-Mandated Utility Low Income, DSM, Environmental, Renewables, and Nuclear Power Plant Decommissioning Programs ("Mandated Programs")

a. How shall costs of mandated programs be recovered from participants in the competitive market?

b. How shall the magnitude of the costs of mandated programs be determined?

The "mandated programs" described above may not be uneconomical to the utility. These costs to the utility may be of greater benefit than other public relations programs and practices of "good corporate citizenship." By offering these programs, the utility has developed a positive image towards creating consumer loyalty while positioning itself in the competitive market. The value of this "goodwill" should be used to offset these costs. Merely because the Commission approved or suggested that these programs would be desirable for a monopoly

utility does not mean that there should be cost recovery because the industry is moving towards competition.

Utilities and third-party providers could offer a voluntary program where ratepayers could contribute additional sums with their monthly power bills, as a means of funding low-income, environmental and renewables programs. As explained above, open competition will lower retail rates and, therefore, there is less need for a low-income program. Regulated programs are ill-equipped to measure the amount of funds and the scope of social programs which the public may desire. Furthermore, the usefulness of these programs will vary among utilities and regions of Arizona, and the cost of administering these programs may more than outweigh the benefits of merely leaving more dollars in the consumer's pocket to make his or her own choice.

Demand-side management (DSM) will play an important role for utilities in a competitive market, as both a resource option and customer service tool. In certain situations, programs designed to reduce demand and increase energy efficiency are more cost-effective utility investments than a narrow focus on supply. In the long run, DSM can lower rates and make a utility more competitive, without being mandated by regulation. Private firms are presently marketing DSM programs independently of the utilities and Commission regulation. DSM services can be marketed the same way as electricity, with the decision left to the seller and buyer.

A11. Encouragement of Renewables.

a. How shall renewables be encouraged in a competitive environment?

b. How could progress in encouraging renewables be measured?

c. How could a renewables program be enforced by the Commission?

By creating a competitive electrical market in Arizona, cost-effective renewable resources will have an opportunity to be used at the appropriate time and in the appropriate amount. Use of renewable resources should not be regulated; instead, these public policies should be left to the State Legislature where tax-credits and other incentives may be addressed. Regulated

mandates requiring the use of renewables, even when not economically efficient, will result in cross-subsidization among resources, rates and ratepayers for the benefit of select industries and users.

A12. Pooling of Generation and Centralized Dispatch of Generation of Transmission.

a. Should pooling of generation or centralized dispatch of generation or transmission be mandatory or voluntary?

b. What technical requirements will be necessary to ensure reliable and efficient use of generation and transmission resources?

Pooling of generation is not necessary in a competitive environment. Pooling of generation and centralized dispatch of generation or transmission should be voluntary. Participants in the Arizona electrical industry may decide these arrangements are to their mutual benefit and those of their customers. If so, this pooling arrangement should be left up to the participants as to how to structure the most effective and competitive program.

A13. Non-Public Service Corporations.

How shall non-public service corporations such as municipal utilities be involved in a competitive market?

Municipal utilities are not regulated by the Arizona Corporation Commission, many are already in the competitive market by purchasing wholesale power, and their rates are generally lower than those of regulated utilities in Arizona. Reciprocity between public and non-public service corporations is not a necessary condition of deregulation. Because these municipal utilities are outside the jurisdiction of the Commission, the issue of competitive markets within or among these non-public service corporations need not be addressed in this proceeding.

A14. Conditions for Returning to Utility Service After the Conclusion of a Pilot Program.

If a pilot were adopted, please indicate what conditions are appropriate for returning to utility service after the conclusion of the pilot.

As noted previously, Nordic Power recommends the "Buy/Sell" framework while the complete open access program is being developed and implemented. The restructuring genie

is out of the bottle; competitive choices are being exercised, making it virtually impossible to return to a regulated monopoly. A pilot program is not needed and, therefore, it is not necessary to address the conditions for returning back to a regulated monopoly environment. Much time and money will be wasted by attempting to predict what may happen while moving from a regulated monopoly to a "controlled" pilot program, when market forces are better able to drive the process towards lower rates. The "Buy/Sell" program should be on-going, until the complete open access program has been adopted by the Commission.

A15. Conditions for Returning to Utility Service.

Please indicate what conditions (if any) are appropriate for returning to utility service if a competitive market is on-going.

If a customer may decide to return to the local utility, no conditions are necessary. By claiming a franchise to serve that customer, the utility has made a commitment to be the electrical supplier of last resort. The utility of course could decline that obligation by foregoing its franchise, and other utilities will be free to provide that service.

A16. Administrative Requirements

a. A utility may require consumers obtaining generation from another entity to adhere to reasonable scheduling notification requirements, accept reasonable deliver points, adhere to reasonable metering requirements, and accept reasonable remote control requirements for interruptions or other purposes. Please specify what you consider to be reasonable.

b. How should the utilities identified in Section A1 notify their customers of the adoption of a competitive program by the Commission?

Each utility should prepare a standard request form for suppliers, outlining (a) the deadline in which to schedule power, (b) the kilowatts and kilowatts per hour ordered, (c) the time of delivery, (d) the delivery points, (e) the metering requirements, and (f) the reasonable costs the utility intends to charge for these services. The customer or third-party provider would then nominate (that is, schedule) the electricity with the utility, under the Nordic Power "Buy/Sell" power program.

The Commission and the utility should notify its customers through public service announcements, bill stuffers, and press releases that changes are occurring in the electrical industry and the customers have the opportunity to exercise a choice in selecting their power supplier(s).

A17. Impacts on Other Utility Customers.

Please indicate how adverse impacts on rates or service quality for utility customers not participating in the competitive market could be minimized.

Under the "Buy/Sell" proposal recommended by Nordic Power, other utility customers will not be adversely affected because delivery services by the utility will be at comparable costs, the same as incurred by the utility for its other customers.

While phasing in the complete open access program, Nordic Power proposes that the Commission encourage all customers to participate in the competitive market. In order to assist residential and small commercial customers to participate, these customers should be entitled to aggregate their electrical load within a defined geographic area. For instance, the New Hampshire Public Utilities Commission has addressed this issue by authorizing "geographic areas of choice" (GACs) to be nominated by an appropriate government authority. Expressions of interest in forming a GAC are submitted to the utility, by providing the following information: (a) location and geographic boundaries of proposed GAC, (b) estimated aggregate load of the GAC, broken down by customer class, (c) demographic profile of the GAC, and (d) number of potential participating customers by class. New Hampshire Retail Competition Pilot Program, Order No. 22,033 (February 28, 1996). A similar program is being proposed in Massachusetts. Consumer service districts (CSDs), as authorized by a municipal governing body, may be established so all citizens may benefit from open access. Adjacent CSD's might also offer joint contracts and negotiate collectively with the host utility for more favorable rates. Under the complete open access program recommended by Nordic Power, the Arizona Corporation Commission should authorize local governments to designate "customer service areas" (CSAs), when small commercial and residential customers indicate an interest in participating in the

competitive market. After a CSA is designated, the local government would work with the host utility in estimating the aggregate electrical load by customer class, the load profile, and the number of potential participating customers by class. This information would then be made available by the CSA to other suppliers of services so as to create a competitive market.

A18. Reporting Requirements for All Sellers of Electricity to End Users.

Please indicate what reporting requirements (to the Commission) are appropriate and who should file reports.

Reporting requirements are not appropriate for third-party providers of electricity to end-users. The Commission may wish to publicize consumer guidelines and tips so as to educate them on how they may benefit from the competitive market, such as by creating a CSA. Private reporting services may grow out of the demand for electrical information and, if so, the subscribers can pay for data collection and dissemination of the information.

A19. Certificates of Convenience and Necessity.

Please comment on whether competitive sellers who supply electricity to an end user must obtain a Certificate of Convenience and Necessity from the Commission (unless the seller already has an applicable Certificate). Please describe whether any conditions on the certificate would be necessary.

Under the "Buy/Sell" framework proposed by Nordic Power, no certificate of convenience and necessity is required. The third-party provider sells the power requested by the customer to the customer's utility. The utility with the certificate of convenience and necessity would then deliver that power to the end-user.

When open access has been completed, a certificate program is unnecessary and would be an additional transaction cost, in a competitive unregulated environment. Third-party providers would be making sales throughout Arizona and, therefore, the territorial notions of a certificate are inapplicable.

Closing Comments

The "Buy/Sell" program of Nordic Power allows for customers who are in need of immediate cost relief to seek lower priced electricity. It is a simple arrangement which has worked well in the natural gas industry. The "Buy/Sell" framework will provide an opportunity to encounter first-hand many of the realities of a competitive electrical market in Arizona. While other issues are being sorted out, Arizona electrical consumers will reap numerous benefits from competitive markets:

- Lower costs will result when construction and operating risks are transferred from ratepayers and shareholders to wholesale generators, users of transmission, and suppliers of services.
- Reliance on market forces, rather than regulation, to determine prices will optimize the efficiency of Arizona's electrical system, reduce cost, and increase everyone's competitiveness.
- Competition will stimulate technological improvements, including commercial applications of innovative geothermal, solar, wind, gas and other technologies.
- Market participants have and will offer a variety of wholesale power resources and related transmission to utilities, enabling them to better plan for electrical demands, lower their costs, and reduce their rates to customers. Demand management and other service options are also being offered by market participants.
- Lower rates will mean economic growth which includes new jobs, increased personal income, and additional tax revenues for local and state governments.

Nordic Power vigorously supports the deliberate and prompt transition to customer choice in the electrical industry. Captive customers should not incur higher power costs while regulatory and jurisdictional issues are being debated. Nordic Power encourages the Commission to take purposeful and swift action so as to avoid federal intervention in these matters of local electrical service. Nordic Power is prepared, along with others, to submit a "Buy/Sell" tariff to the Commission so that this open access program to end-users may begin immediately.

RESPECTFULLY SUBMITTED this 28th day of June, 1996.

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ORIGINAL and ten copies of the foregoing HAND-DELIVERED this 28th day of June, 1996 with:

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